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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 SHANE CAMPBELL GALLERY, INC.,

4 Plaintiff,

5 v.

18 Civ. 5134 (JSR)

6 FRIEZE EVENTS,

7 Defendant.

Oral Argument

8 -----x
9 New York, N.Y.
February 25, 2020
11:08 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 LEWIS SAUL & ASSOCIATES, P.C.

15 Attorneys for Plaintiff

16 BY: LEWIS SAUL, ESQ.

EDWARD A. COLEMAN, ESQ.

17 KELLEY DRYE & WARREN, LLP

Attorneys for Defendant

18 BY: MICHAEL C. LYNCH, ESQ.

JAMES B. SAYLOR, ESQ.

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(Case called)

THE DEPUTY CLERK: Will the parties please identify themselves for the record.

MR. SAUL: Yes. Good morning, your Honor. Lewis Saul, S as in Sam, A-U-L, for plaintiffs.

MR. COLEMAN: And Edward Coleman from Lewis Saul & Associates for plaintiff.

MR. LYNCH: Good morning, your Honor. For the defendant, Michael Lynch from Kelley Drye & Warren.

MR. SAYLOR: Good morning, your Honor. James Saylor, also of Kelley Drye & Warren, for the defendants.

THE COURT: Good morning.

All right. As near as I can tell, nothing has occurred in this case. Did I miss something?

MR. SAUL: No, your Honor. This motion was sitting dormant for a year and nothing has occurred in the case.

THE COURT: And that's before Judge Moses, or has she issued an order on it?

MR. COLEMAN: No. It was before Judge Batts.

THE COURT: No, no, no. That's not my question. It was before Judge Batts. I thought she referred the motion to Magistrate Judge Moses.

MR. COLEMAN: Correct.

THE COURT: Yes. Has Judge Moses done anything?

MR. COLEMAN: No.

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1 THE COURT: All right. Bear with me one minute. I
2 want to call Judge Moses.

3 Please be seated. I'm sorry I didn't have the file in
4 front of me and I'd forgotten that I'd already withdrawn the
5 reference to Judge Moses. So I will decide that motion
6 promptly.

7 I suggest the following case management plan. By the
8 way, this is a jury case?

9 MR. SAUL: Yes.

10 THE COURT: Any additional parties must be
11 accomplished by March 25th. Amended pleadings by March 25th.
12 First request for documents must be served by March 4th. The
13 extremely limited interrogatories permitted by Local
14 Rule 33.3(a), which are the only interrogatories I permit, must
15 be filed by March 4th.

16 Does either side anticipate experts?

17 MR. SAUL: Possibly, your Honor. One.

18 THE COURT: Okay. So moving experts June 19th;
19 answering experts, July 10th. All depositions to be completed
20 by July 24th. Requests to admit served by June 17th. All
21 discovery to be completed by July 24th. Moving papers on any
22 summary judgment motion August 7th. Answering papers
23 August 21st. Reply papers August 28th. Oral argument on any
24 summary judgment motion, September 11th, at 2 p.m.

25 Any problem with any of those dates?

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1 MR. SAUL: No, your Honor.

2 THE COURT: Okay.

3 MR. LYNCH: Your Honor?

4 THE COURT: Yes.

5 MR. LYNCH: No. Never mind. It's okay.

6 THE COURT: All right. So I've signed a case
7 management plan incorporating all those dates, and I'll give it
8 now to my courtroom deputy to file, to docket it
9 electronically.

10 All right. Anything else we need to take up today?

11 Very good. Thanks very much.

12 MR. SAUL: Your Honor, there's an outstanding motion
13 that --

14 THE COURT: I'm going to assign that in a matter of
15 days.

16 MR. SAUL: Okay. Thank you, your Honor.

17 THE DEPUTY CLERK: All rise.

18 o0o

19 (In open court)

20 THE COURT: I was so, as you may have gathered,
21 chagrined by the two cases prior to yours that I completely
22 forgot that I wanted to give you the opportunity today to have
23 oral argument on your motion.

24 I have a conference call at 11:30, but let's at least
25 start oral argument, and then the conference call will only

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1 last ten minutes or so, so we can continue after that if
2 necessary.

3 So let me hear from moving counsel.

4 MR. LYNCH: Plaintiff?

5 THE COURT: From moving counsel.

6 MR. LYNCH: Oh, I'm sorry. I couldn't hear what you
7 said.

8 THE COURT: That's all right.

9 MR. LYNCH: Good morning, your Honor.

10 This case, to the extent that you haven't had a chance
11 to familiarize yourself too much with it, it involves an art
12 fair that our client Frieze puts on on Randall's Island every
13 May in New York. They have another one in London and another
14 one in Los Angeles.

15 In May of 2018, the plaintiff here was one of the
16 galleries that rented space to be part of that fair. Our fair
17 on Randall's Island has a series of tents that they're in, and
18 the complaint here is essentially that, we believe, plaintiff
19 didn't make the number of sales that they had hoped to make or
20 that they expected to make, and so as a result, although that
21 was not, you know -- there was certainly no guarantee by the
22 defendant in terms of how many sales they would make, they've
23 now attempted to blame the weather for that lack of sales. And
24 in particular, Judge, the first two days of this fair, which is
25 a five-day fair in early May, the temperature in New York

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1 exceeded 90 degrees, as plaintiff has alleged. And the
2 complaint is that the --

3 THE COURT: Just a function of global warming, I'm
4 sure.

5 MR. LYNCH: Who knows.

6 So the complaint is essentially that the air
7 conditioning was insufficient and, as a result, they didn't
8 make the number of sales and drive the traffic that they --

9 THE COURT: Well, as I understand it, the key clause
10 of the contract is Section 18: "Frieze will use commercially
11 reasonable efforts to provide common area lighting, heating,
12 and air conditioning but shall not be liable for any loss or
13 damage due to failure or interruption of any service." And the
14 question is whether plaintiffs have adequately alleged that you
15 failed to use commercially reasonable efforts. Do I have that
16 right?

17 MR. LYNCH: Yes.

18 THE COURT: Okay. So as I further understand it,
19 there were air conditioning vents located along the ceiling,
20 which was a change from years past when they were at the tent's
21 floor, yes?

22 MR. LYNCH: That's the allegation, yes, your Honor.

23 THE COURT: And I understand you may not agree with
24 any of these allegations, but for these purposes, I take them
25 as established if they're well pleaded. And in any event,

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1 whatever air conditioning there was, they say, was totally
2 insufficient.

3 There doesn't appear to me to be much New York law --
4 much law, period -- on what is meant by "commercially
5 reasonable efforts." And a question I have for your adversary
6 is whether they have adequately alleged the specific ways in
7 which the air conditioning fell short of the standard, but this
8 kind of dispute has historically, in other kinds of torts, been
9 a classic jury question, so I wonder why it isn't here.

10 MR. LYNCH: Your Honor, so it could be. We've cited
11 some case law that sets a very high standard, in particular the
12 *Holland Loader* case, which plaintiffs also cited. It's a
13 Southern District case from 2018. And that sets the standard
14 as a conscious attempt to secure an outcome or some affirmative
15 action by the party required to exert efforts. Now there's no
16 allegation that we failed to exert efforts.

17 THE COURT: I'm looking at that case by Judge Woods,
18 and it says, confirming what I just said, although there is
19 "scant case law defining the phrase 'commercially reasonable
20 efforts,' compliance with a commercially reasonable efforts
21 clause requires at least some conscious exertion to accomplish
22 the agreed goal." That sounds like not a matter that can be
23 dealt with on a motion to dismiss.

24 MR. LYNCH: Well, your Honor, I would respectfully
25 disagree and I would point you to the pleadings in the

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1 complaint where the plaintiff first acknowledges that there was
2 air conditioning, right? So there was an effort to have air
3 conditioning there. And that's not the kind of sort of failure
4 to act that these cases talk about in terms of the pleading
5 standard, the minimal standard. That air conditioning unit,
6 you know, worked three -- the third day in, there was no
7 complaint that it didn't work. That day it was in the 80s.
8 Obviously plaintiff themselves plead that this was a heat wave,
9 an unexpected heat wave which set records.

10 THE COURT: Well, when you say unexpected heat wave,
11 the temperatures like that would be normal like in July and
12 August. It's not like an experience -- I made the joke about
13 global warming, but just human experience is that there are
14 often days in May that are summer heat, just like there are
15 often days in April that are winter cold. I mean, those things
16 happen with the change of seasons. I don't see what's so
17 unusual in terms of foreseeable expectations that there would
18 be a really hot day or two in May.

19 MR. LYNCH: So foreseeable is not the standard. So
20 the standard is whether it's compliant, whether they've taken
21 actual steps and actual actions to meet the need. It's not an
22 absolute guarantee, if you look in the cases. One of the other
23 cases talks about how it's not a hindsight comparison of what
24 you could have done better, you know, what it might have been.
25 And here, the plaintiff doesn't plead what concrete steps we

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1 failed to take, what concrete steps we could have taken that
2 could have resolved the issue.

3 You know, this was extreme heat. I don't think
4 there's a question about that. And while you may be able to
5 anticipate that, it's also commercially reasonable, right? The
6 standard is not we have to take all steps to guarantee against
7 all possibilities. It's a commercially reasonable --

8 THE COURT: Commercially reasonable, one would think,
9 means commercially reasonable under what would be the expected
10 conditions. I don't see how the issue of foreseeability is
11 irrelevant. It's not the standard, but I think it's still
12 relevant. If a reasonable commercial vendor, asked to air
13 condition a tent, was not taking into account that there might
14 be some very hot days in May, why isn't that commercially
15 unreasonable or at least a jury question as to whether it was
16 commercially unreasonable?

17 MR. LYNCH: Well, I think the plaintiff has to plead
18 facts that we failed to take some steps that we could have done
19 to fix the problem. The cases which analyze the issue talk
20 about basically an abandonment of your obligation. Plaintiff
21 even pleads that we were attempting to fix it during the heat
22 wave, that we were taking affirmative steps, that we were, you
23 know, we were doing what we could do under the circumstances.
24 You know, and again, I would just say it's not an obligation to
25 prepare for all circumstances. It's not an obligation to

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1 prepare for extreme situations. It's a reasonably commercial
2 standard, which is lower.

3 THE COURT: But -- and maybe we're still at odds here.

4 MR. LYNCH: I'm sure --

5 THE COURT: Yes, it's not a guarantee that you will
6 prepare for all possible events. You know, there's an
7 unbelievable heat wave that no one could ever have expected,
8 but it doesn't mean that you don't prepare for changes in
9 temperature that are reasonably foreseeable. You're not
10 maintaining, are you, that if the average high temperature in
11 May was 70 degrees, hypothetically, and your air conditioning
12 failed to work adequately at 71, you would have still been
13 commercially reasonable?

14 MR. LYNCH: No, but I think, you know, mid 90s is a
15 little different, and plaintiffs even acknowledge --

16 THE COURT: I agree, but -- well, all right.

17 With apologies, I have to take that conference call,
18 but we will continue. I don't imagine this call, worst case,
19 will last more than 15 minutes, so why don't you come back in
20 15 minutes, and if it's about five minutes later, so be it, but
21 I don't think it will be later than that.

22 MR. LYNCH: Thank you, Judge.

23 THE COURT: Very good.

24 (Recess)

25 (In open court)

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1 THE COURT: Please be seated.

2 So let's continue.

3 I didn't have a chance to ask you about the other part
4 of this clause, the no liability. So it says in Section 18,
5 "Frieze will use commercially reasonable efforts to provide
6 common lighting, heating and air conditioning but shall not be
7 liable for any loss or damage due to failure or interruption of
8 any service." So if that means what I think you're saying it
9 means, doesn't it totally wipe out the first clause?

10 MR. LYNCH: Yes, it does.

11 THE COURT: So --

12 MR. LYNCH: Well --

13 THE COURT: So you are free to, under this contract,
14 to use commercially unreasonable services, commercially
15 unreasonable efforts, because you can't be charged with any
16 loss.

17 MR. LYNCH: So, your Honor, I think maybe I spoke a
18 little too quickly on your question, but look, I think what
19 that provision is saying is that we are going to do what we can
20 to make this a comfortable environment for the fair. But
21 everybody knows that it is an outdoor fair and there can be
22 storms, there can be thunderstorms, there can be, you know,
23 extreme weather conditions, and here, there was an extreme
24 weather condition. It was literally an unprecedented heat
25 wave, and I think here -- it was. As they pleaded as well, it

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1 was a record-breaking heat wave that year in May.

2 THE COURT: Well, I think my understanding is it was
3 record breaking for those particular days. I'm not sure it was
4 record breaking for May as a whole. But anyway --

5 MR. LYNCH: May can be a volatile month, but we're in
6 early May. Your Honor, I guess, if I may, I think, you know,
7 the idea is, we're going to do our best but you cannot hold us
8 responsible for extreme weather conditions. And in fact, we do
9 have Section 13 of the contract that addresses that
10 specifically, in which we disclaim liability for any weather
11 condition. And I think an unprecedented, record-breaking heat
12 wave --

13 THE COURT: Yes. Very broad. I want to ask your
14 adversary about Section 13 when we get to it, but my question
15 to you is: Let's say you use unquestionably unreasonable
16 commercial efforts, in my hypothetical. You're grossly
17 negligent. You just blow it completely. But under your
18 interpretation of these clauses we've just been discussing,
19 your position is, ah, too bad, you agreed that we would not be
20 responsible for any of the consequences. So is there any
21 situation in which you could be held responsible? Is the first
22 clause about "commercially reasonable efforts" just a phantom,
23 a miasma?

24 MR. LYNCH: No, your Honor. What I would submit, your
25 Honor, is that clearly gross negligence would be a situation

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1 that would arise in which a claim could arise. And I don't
2 think we're disputing that. We're just disputing that they
3 pled that. With respect to 18 specifically, you know, what we
4 are saying is we are going to do our best to get out to you
5 these specific services on an island, unconnected to, you know,
6 a building or an original source, and we are going to do what
7 we can to make that work, but we want you to recognize that
8 this is an inherently unpredictable event because it is an
9 outdoor event.

10 THE COURT: All right. Let me hear from your
11 adversary. We'll give you a chance for rebuttal at the end.

12 MR. LYNCH: Thank you, your Honor.

13 MR. SAUL: Good morning, your Honor.

14 THE COURT: Good morning.

15 MR. SAUL: Whether or not something is commercially
16 acceptable is a question for the jury.

17 THE COURT: Well, they're saying, among other things,
18 that to be adequately pleaded, it's not enough to say it was
19 not commercially acceptable, that you have to say, because they
20 didn't do this, they didn't do that, and they say you don't
21 adequately allege that with specificity.

22 MR. SAUL: Well, we agree with the first half of that
23 statement, but we disagree with the second half. And let me go
24 through the complaint and point your Honor out to what we did
25 in fact say.

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1 THE COURT: Yes. Let me get a copy of the complaint.

2 Here we are. Good. Go ahead.

3 MR. SAUL: In paragraph 21, we state, of the first
4 amended complaint, "Defendant breached by not properly
5 designing, testing, and regulating the AC system."
6 Paragraph 21, "by failing to adequately respond to the problems
7 resulting from high temperatures within the tent and breached
8 its obligation to use commercially reasonable efforts to
9 provide common area air conditioning." Paragraph 18 of the
10 contract states they would use commercially reasonable efforts.

11 Paragraph 23 of the first amended complaint states,
12 "Frieze was aware of the problem but took no action to correct
13 it."

14 Paragraph 22 and 24 says, "At the beginning of the
15 first day of the event, the heat in the tent was oppressive and
16 the temperatures continued to rise throughout the day."

17 22, 24, 25, "The environment in which exhibitors were
18 expected to conduct their business was not adequately air
19 conditioned."

20 And it goes on and on and on. And we plead with
21 specificity that they did not act in a commercially reasonable
22 way. I'm sure that I don't have to remind the Court, because
23 the Court knows, but under Rule 8 a complaint must only contain
24 a short and plain statement of the claim showing that the
25 pleader is entitled to relief, and reviewing a motion to

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1 dismiss under 12(b)(6), courts accept all factual allegations,
2 as I just stated, in the complaint is true and draw all
3 reasonable inferences in favor of plaintiff.

4 THE COURT: Thank you for reminding me of that, but of
5 course that has, in effect, had a gloss put upon it by the
6 *Iqbal* and *Twombly* cases. And so, for example, you say in
7 paragraph 21 that you just drew my attention to, "Frieze failed
8 to properly design, test, and regulate the ability of the air
9 conditioning system at the fair to adequately maintain an
10 environment within which it conducts commercial business." But
11 that's essentially a conclusion. It's not a statement of fact,
12 it's a conclusory statement, that the design, testing, and
13 regulation were "improper." So even before *Iqbal* and *Twombly*,
14 those kind of allegations would probably not cut it for Rule 8
15 purposes.

16 Now you do add more detail, as you just pointed out,
17 as to a failure, once the heat became oppressive, that,
18 according to your complaint, they did nothing. Where do you
19 find the contractual duty for them to do something at that
20 point? I'll give you a hypothetical. So supposing they did
21 make commercially reasonable efforts to design an air
22 conditioning that would work, in my hypothetical, for all
23 reasonably foreseeable events. They say they don't have to do
24 that, but I'll assume that for purposes of the hypothetical.
25 But along comes a heat wave that no one could reasonably have

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1 assumed. It gets to 120 degrees. Your complaint seems to
2 suggest that they have a duty to come in at that point and do
3 something. But where is that in the contract?

4 MR. SAUL: Is the question if the temperature --

5 THE COURT: Well, I'm just saying, I'm looking at some
6 of the paragraphs you just brought to my attention.

7 22. "Within the first hour of the opening day, the
8 heated temperatures in the tent were oppressive."

9 23. "Frieze was aware of the problem but took no
10 action to correct."

11 So that presupposes, for that to be relevant, that
12 they had a duty to correct it at that point. Where do you find
13 that duty in the contract?

14 MR. SAUL: The duty is to provide, in the contract --
15 then I can find -- I can go through the contract, but the
16 contract says that they will provide air conditioning --
17 electricity, etc., etc., etc., and air conditioning.

18 THE COURT: No, no. I know that. But, for example --
19 well, okay. I think, focusing on that, as you did, on
20 paragraph 23, because I'm not sure I see anywhere else anything
21 other than conclusory statements, not to mention one or two
22 what might be called rhetorical excesses.

23 Paragraph 32. "Frieze's offer is ludicrously
24 insufficient to compensate plaintiffs and other exhibitors for
25 Frieze's gross negligence as described above." I take it you

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1 don't find their offer acceptable. But I don't think the word
2 "ludicrous" is an appropriate professional word to use in a
3 complaint.

4 Okay. Anything else you wanted to say?

5 MR. SAUL: No. Only just to reiterate, I think that
6 we've pled, under the rules of pleading for a breach of
7 contract, the elements necessary --

8 THE COURT: So supposing I disagreed.

9 MR. SAUL: I should have shut up.

10 THE COURT: That's all right. Supposing I disagreed
11 and I would give you leave to amend. What would you add?

12 MR. SAUL: Well, I think that we -- I'm of sort of a
13 double mind there. I think that we've pled properly --

14 THE COURT: No, I understand. And if I agree with
15 you, that's that. But if I disagree with you, I want to know
16 whether I need to give you leave to amend. I wouldn't give you
17 leave to amend if there's nothing more you can add.

18 MR. SAUL: Well, I suppose that we would say -- we
19 would speak with an expert and an expert would say -- for
20 instance, if you're stuck on the tarmac when it's very warm
21 outside, they bring in these big units blowing cold air. We
22 could add that they should have done X, Y, and Z in order to
23 bring the temperature down --

24 THE COURT: But --

25 MR. SAUL: -- that sort of thing.

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1 THE COURT: All right. Thank you very much.

2 Let me hear in rebuttal from defense counsel.

3 MR. SAUL: Thank you, your Honor.

4 THE COURT: Thank you.

5 MR. LYNCH: Thank you, your Honor.

6 THE COURT: So following up on that, supposing --
7 because I do agree with you that at least much of this
8 complaint is conclusory. Supposing I were, hypothetically, to
9 dismiss the complaint. Second Circuit law says that in all but
10 extraordinary circumstances, have to give them leave to
11 replead, and they say they can fill in or they would consult an
12 expert to fill in the gaps. So is there any reason why I
13 shouldn't at least give them that leave?

14 MR. LYNCH: Your Honor, no. I think the problem with
15 the pleadings is that there is no more that could have been
16 done here. And I think what we're talking about is, you know,
17 we have reasonably -- we have an obligation to provide
18 reasonably commercial efforts. Now what we tried to do is, we
19 had air conditioning. There's no allegation that on the third
20 day it didn't work, and that it was in the mid 80s for early
21 May, which is a high temperature, and so, you know, we were
22 dealing with an extreme weather condition. That is just beyond
23 anything --

24 THE COURT: So what about this paragraph that I was
25 just focused on that when it reached these extremes, you did

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1 nothing?

2 MR. LYNCH: You're referring to their allegation in
3 paragraph 23, correct?

4 THE COURT: Paragraph --

5 MR. LYNCH: In the complaint?

6 THE COURT: Yeah, I think that's right. Hold on just
7 a second.

8 Yes, 23.

9 MR. LYNCH: So there is no obligation in the contract.
10 We don't have an obligation to cure that. In fact, we think
11 that we've disclaimed liability in the event of an
12 interruption. Obviously it's good business practice to try to,
13 you know, keep the customers happy and get it working, but
14 there's no contractual obligation to do so.

15 And I would also submit, your Honor, that this is also
16 a very conclusory statement, right, that we took no action and
17 we did have an air conditioning unit on site that by the third
18 day they were not complaining about. And so it's not that we
19 took no action. I mean, they've even gone so far as to plead
20 in their opposition brief that we handed out water bottles and
21 that we were apologizing, but, you know, that is the extent of
22 the allegation. And they have not and cannot identify a
23 specific thing that they think we could have done.

24 Now, you know, it's also important to go back to where
25 I started, which is in the *Holland Loader* case. You know, the

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1 court there was saying, you don't go back in hindsight and sort
2 of re-evaluate what they did. And that was sort of my quibble
3 with the term "foreseeable." That is not the test. The test
4 is, you know, looking back, was it commercially reasonable, and
5 I think there is a difference there, and I think there's
6 importance in the language in that case, and so for example, I
7 think it's spelled out a little bit more in the -- there's a
8 New York Court of Appeals case that we cited called *JFK*. And
9 in that case, your Honor, the plaintiff, JFK Holding, was suing
10 the defendant, the Salvation Army, under their contract for
11 failing to engage in commercially reasonable efforts to collect
12 as much rent as they could from the City of New York in
13 connection with a separate contract they had with the city.
14 And in that instance, the plaintiff couldn't allege and didn't
15 allege that there was any provision in that contract that would
16 have permitted the defendant in that case to collect more,
17 right? Their argument was basically about the condition of the
18 building, and it didn't relate to the contract itself. And in
19 that instance that was a case that was dismissed at the
20 pleading stage. And that is a, as I said, a New York State
21 Court of Appeals opinion.

22 We also cite another trial court matter, trial court
23 case from New York State, where it was dismissed on the
24 pleadings, but ultimately, you know, we feel that the
25 commercially reasonable standard does not require us to prepare

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1 for any eventuality and it becomes difficult to draw the line.
2 You know, you mentioned earlier 120 degrees. Where does that
3 line get drawn?

4 THE COURT: Okay. Thank you very much.

5 MR. LYNCH: Thank you.

6 THE COURT: So I thank both sides for their good
7 arguments. I will give you a bottom-line ruling on this motion
8 by Thursday of this week. I'm not sure I'll have a full
9 opinion by then, but at least the bottom line.

10 There are obviously three logical possibilities. One
11 is I deny the motion, then we already have the case management
12 plan in place and go forward; one is I grant the motion with
13 prejudice, that's the end of the case; one is that I grant the
14 motion with leave to replead, in which case I will put
15 plaintiffs on a very short time frame to replead. Probably a
16 week for any amended pleading. And we'll adjust the case
17 management plan accordingly at that point. So those are the
18 three possibilities.

19 Anything else we need to take up today?

20 MR. LYNCH: Just a little clarification. When you say
21 a bottom-line order, you're referring to the -- there's a --

22 THE COURT: It means it's two sentences: "The motion
23 is granted"; "the motion is denied"; or, "The motion is granted
24 with prejudice"; "the motion is granted without prejudice."
25 That's what I mean. I always follow it up with a full opinion.

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1 MR. LYNCH: No, I've been before you for that as well.
2 But my question is a little different. We haven't discussed a
3 couple of the other claims, like unjust enrichment.

4 THE COURT: I'm sorry. You're right to remind me. So
5 the case management plan then stands in place then, given the
6 other claims.

7 Okay. Very good. Thanks very much.

8 ALL COUNSEL: Thank you, your Honor.

9 o0o